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FEB 1 8 1932

CHARLES ELMORE CROPLEY

No. 694.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

UNITED STATES OF AMERICA, APPELLANT (BELOW),

v.

GEORGE OTIS SMITH, APPELLEE (BELOW).

ON CERTIFICATE FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

JOINT MOTION TO BRING UP THE ENTIRE RECORD

JOHN W. DAVIS,
ALEXANDER J. GROESBECK,
Counsel for Appellant.
GEORGE WHARTON PEPPER,
Counsel for Appellee.

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Now come the United States of America, appellant, and George Otis Smith, appellee, in this cause in the Court of Appeals of the District of Columbia, now pending in this Court on questions certified by the Court of Appeals, and move that this Honorable Court issue its writ of certiorari commanding that court to certify and send to this Court the entire record in this cause, in order that this Court may consider and decide the whole matter in controversy as upon appeal pursuant to Section 239 of the Judicial Code, as amended by the Act of February 13, 1925, and Rule 37 of the Rules of this Court.

A certified transcript of the record in this case and nine printed copies thereof have been lodged with the Clerk of this Court as exhibits to this motion.

This was an action in *quo warranto* commenced in the Supreme Court of the District of Columbia by the United States of America against George Otis Smith, to determine the right of George Otis Smith to hold the offices of member and chairman of the Federal Power Commission. From a judgment in favor of the respondent, the United States duly appealed to the Court of Appeals of the District of Columbia, which court by certificate filed February 12th, 1932, has certified to this Court the following question:

> Upon the foregoing undisputed facts [contained in the certificate] was, or was not, the said George Otis Smith appointed by the President by and with the advice and consent of the Senate as a member of the Federal Power Commission, and duly designated as Chairman thereof?

It is thought that the entire record will supply the Court with information which is not available in the certificate alone, and which will be of material assistance to the Court in reaching its decision. The record contains a stipulation of counsel, embodying the reconsideration rules of the United States Senate from 1790 to date, and numerous historical precedents thereunder taken from the Executive Journal of the Senate, the records of the Executive Offices of the White House, and the records of the Executive Departments concerned. This stipulation contains an exhaustive com-

pilation of historical precedents gathered together in convenient form. This material was considered by the court below and was accordingly made a part of the record in the cause.

The case was tried before the Supreme Court of the District of Columbia upon petition and answer, together with the stipulation above referred to. The stipulation occupies 81 printed pages of the record. The rest of the record consists of the pleadings, the opinion of the court, the judgment, and the papers filed in connection with the appeal. If the record is brought up the Court will not be required to read any extended notes of testimony, but will have before it only undisputed facts which may prove of assistance in the final determination of the case.

Wherefore, the parties hereto jointly pray that this Honorable Court issue its writ of certiorari commanding the Court of Appeals of the District of Columbia to certify and send to this Court the entire record in this case, in order that this Court may consider and decide the whole matter in controversy as upon appeal.

Respectfully submitted,

JOHN W. DAVIS,

ALEXANDER J. GROESBECK,
Counsel for Appellant (below).

GEORGE WHARTON PEPPER,
Counsel for Appellee (below).

February, 1932.